


PROGRAM DIRECTOR ACTION REQUEST

To: Ted Rauh, Program Assistant Director
Waste Compliance and Mitigation Program

From:  FOR SDN
Scott Walker, Division Chief
Cleanup, Closure and Financial Assurances Division

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Reviewed By: Steve Levine, Legal Office

Prepared On: July 12, 2010

Subject: **APPROVAL OF THE PENNSYLVANIA AVENUE CLOSED LANDFILL SITE, FACILITY NO. 48-CR-0006, SOLANO COUNTY, SOLID WASTE DISPOSAL AND CODISPOSAL SITE CLEANUP PROGRAM (SOLID WASTE DISPOSAL TRUST FUND, FY 2009/10)**

Summary: Department of Resources Recycling and Recovery (Department) staff have completed an evaluation and recommend approval of the Department-managed cleanup of the Pennsylvania Avenue Landfill Site (Site) pursuant to the Solid Waste Disposal and Codisposal Site Cleanup Program (Program).

Time Factor: Decision required no later than August 9, 2010.

Options: The Program Director may decide to:

1. Approve the proposed project;
2. Disapprove the project; or
3. Direct staff to provide additional information and bring the project back for future consideration.

Recommendation: Staff recommend Option 1.

Program Eligibility: The Program addresses cleanup of solid waste disposal and codisposal sites where the responsible party either cannot be identified or is unable or unwilling to pay for a timely remediation and where cleanup is needed to protect public health and safety or the environment. Cleanup projects are implemented through Department-managed contracts, grants, and loans. Staff uses adopted regulations and policies in determining site eligibility. Unless otherwise noted, actions proposed for this project are specifically eligible pursuant to the regulations.

Site Location/Description: The site is a 5-acre closed landfill located approximately 400 feet south of the Intersection of Pennsylvania Avenue and Highway 12 in the unincorporated area of Solano County near Fairfield. The site was a Class III landfill that was owned and operated by the City of Fairfield in the 1970's and closed sometime in between 1979 and 1982.

On March 29, 1982, the City of Fairfield grant deeded the property to Lewis Pierce (40 percent interest), Richard Russell Pierce (40 percent interest) and James Cox (20 percent interest) in exchange for an acquisition agreement of property in the amount of \$89,500. On April 24, 2001, James Cox quitclaim his portion of the property to Gregory Gilbert, Attorney at Law, in trust for Dr. Eve DelRio.

The City of Fairfield rented the site from the current owners and operated it as a construction material transfer station in the 1990's. The transfer station ceased operation and the rental agreement was terminated in 1999.

The Solano County Department of Environmental Health Services (LEA) has noted numerous violations at the site and issued Notice of Violations to the property owners since September 2003. On November 20, 2008, the LEA issued a Corrected Notice and Order (N&O) to the property owners. As described in the N&O, the site currently does not meet the State Minimum Standards (SMS) for a closed landfill in California for site security, litter control and site maintenance. Evidence of homeless activities at the site was also observed since the tall vegetation is providing privacy and shelter. The N&O required the owners to submit a work plan and upgrade the existing perimeter fence, remove and control the tall vegetation, dispose of the existing litter, and provide a preventative maintenance plan. As of the date of this memorandum, the Solano County LEA has not received a work plan from the owners.

On April 10, 2009, the LEA requested the Program's assistance to bring the site into compliance with SMS.

Proposed Remediation Project: The proposed remediation will include the installation of an upgraded perimeter fence, removal and proper disposal and/or recycling the illegally stockpiled solid waste and the removal of the high vegetation. The services of a licensed herbicide subcontractor will also be obtained to spray the roots of the vegetation to prevent re-growth of the vegetation.

Department is awaiting the City's submission of such assurances, which we expect to receive for your review prior to Staff's requested date for Department decision on this matter of August 9, 2010.

Site Prioritization: Based on the confirmed nuisance and degree of risk to public health and safety, and the environment, the prioritization category is A1. Priority A1 is a condition of pollution or nuisance from solid waste based on comparison with state minimum standards with significant residential, industrial, park, recreation, or environmentally sensitive areas within 1,000 feet. Residential, industrial and park areas are located within 1,000 feet of the site.

California Environmental Quality Act (CEQA): Program staff has reviewed the proposed project and determined that it is categorically exempt per the Class 8 exemption (14 CCR §15308: Actions by Regulatory Agencies for Protection of the Environment). Compliance with CEQA requirements will be made with a Notice of Exemption filed by the Program staff.

Support: Staff received a request for cleanup assistance from the LEA on April 10, 2009.

Opposition: Staff have not received any written opposition at the time this document was submitted for approval.

Findings: On the basis of the information and analysis in this Request for Action, the Department hereby approves this project under the Solid Waste Disposal and Codisposal Site Cleanup Program.

In addition, the Department directs staff to prepare and file a Notice of Exemption for the project with the State Clearinghouse. Upon completion of the cleanup, staff will immediately pursue cost recovery.


Ted Rauh, Program Assistant Director
Waste Compliance and Mitigation Program

JULY 29, 2010
Date

Fiscal Impacts: The Program-managed portion of the project will be performed on a time-and-materials basis, with a preliminary cost estimate of \$142,000. Actual costs may vary depending on a variety of factors including, but not limited to the quantities and/or types of materials encountered, market forces, required timeframes for cleanup, and competitive bids from subcontractors.

Funding for the project will be derived from previously encumbered funds from the Solid Waste Disposal Trust Fund in the Program's Northern California remediation contract (IWM07036). The contract currently has \$449,000 in available funds from the Solid Waste Disposal Trust Fund and is adequately funded to complete this project.

Enforcement Actions and Cost Recovery: Public Resources Code Section 48023 directs the Department to seek reimbursement for monies expended under the Program to the extent possible. The present violations at the site are the result of a lack of monitoring and maintenance of the site by the most recent owner, Gregory Gilbert, Attorney at Law, in trust for Dr. Eve DelRio, Lewis Pierce, and Richard Russell Pierce, as well as possibly prior owners. For this project, staff recommend that cost recovery from the present owner be pursued to the extent practical by the Department. The Department will at a minimum pursue a lien on the property for cost recovery.

With respect to the former owner/operator of the site, the City of Fairfield, as previously addressed the present violations at the site are the result of a lack of monitoring and maintenance by the most recent owner and possibly prior owners who acquired the site after it was properly closed by the City in accordance with the laws at the time in the early 1980s. The City had no direct possession, custody or control of the site during this period nor did they have enforcement authority over the site, as it is out of their jurisdiction and Solano County is the LEA. Thus this is not a case where the present violations at the site were a direct consequence of the City's former operations. Based on the above the City has requested that the Department perform the cleanup and forego cost recovery from the City. The Department has advised the City that while consideration may be given to foregoing cost recovery in this instance, there is the possibility that in the future there may be additional violations of State Minimum Standards at the site which are a direct consequence of the City's prior operations (i.e., if there is an issue with the integrity of the cap covering the waste or the generation of unacceptable levels of methane gas from the decomposed solid waste). In consideration for foregoing cost recovery for this project the Department has requested the City's assurance that it would work with the LEA and the Department in attempting to remediate any such future issues arising from the prior operations at the site and would explore such options as the Department's partial grants program and/or other options should it become necessary in the future. Furthermore, the City will provide to the Department any available documents that might help its efforts for cost recovery. The